

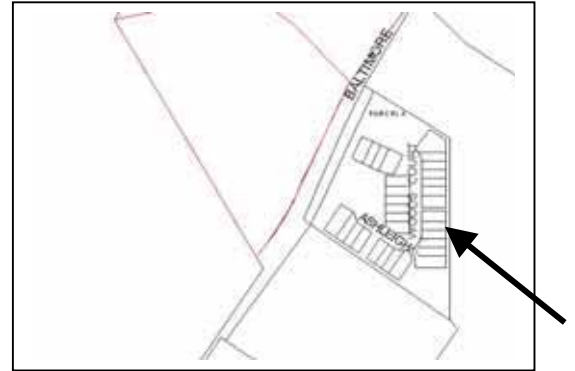
**CITY OF ROCKVILLE PLANNING DIVISION  
STAFF REPORT**

July 8, 2005

**SUBJECT:**

Variance Application APP2005-00844

Applicant: Charles Conley  
2029 Ashleigh Woods Court  
Rockville, Maryland 20851



Property Location: 2029 Ashleigh Woods Court

Board of Appeals Public Hearing Date: July 14, 2005

**REQUEST:**

The applicant seeks a variance of four feet from the thirty foot project perimeter setback requirement within a residential townhouse development in order to construct a deck.

**STAFF RECOMMENDATION:**

Approval, subject to the following:

1. That the deck be constructed in substantial conformance with the submitted plans and with materials compatible with the existing home; and
2. The applicant must submit an Affidavit of Posting certifying that the public hearing sign has been posted on the property in accordance with City requirements.

**ANALYSIS:**

**Project Proposal**

The applicant proposes to construct a twenty-two foot wide by thirteen foot deep elevated, uncovered deck at the rear of a townhouse in the Ashleigh Woods townhouse development. Uncovered decks are permitted to encroach nine feet into the rear setback. The proposed deck, however, exceeds the permitted encroachment by four feet.

### **Property Description and Background**

The Ashleigh Woods townhouses were constructed after gaining Residential Townhouse development approval. The rear or east side and the north side of the development are bordered by Rock Creek Regional Park.

The subject property is located in the Ashleigh Woods townhouse development off Baltimore Road. The property includes a 1,644 square foot lot that is improved with a three story, interior townhouse. The rear side of the townhouse borders the rear or east side of the development and looks into Rock Creek Regional Park. This townhouse was constructed two feet off the project perimeter setback line because of the offset of adjacent units that is required in townhouse development. The rear of the house is improved with a pair of two-story bay windows with a door that is located between them. That door will be used for access onto the deck.

### **Requested Variance**

The property is located within the R-90 Zone but the setbacks are determined by the Residential Townhouse development approval. The building setback is required to be a minimum of thirty feet from the project perimeter but there is a permitted nine foot encroachment for uncovered porches. Because the bay windows encroach one foot into the setback and the deck is twelve feet deep from that point, the proposed deck exceeds the allowable encroachment four feet.

### **Applicable Sections of the Zoning Ordinance**

Section 25-1 defines variance as a modification only of the density, bulk or area requirements, where such modification will not be contrary to the public interest and, owing to conditions unique to the property and not the result of any action taken by the applicant, of which literal enforcement of the ordinance would result in practical difficulty.

### **Staff Analysis and Recommendation**

The following are the findings that must be made in order for the Board to approve a variance, as well as staff's observations.

1. **The variance as requested would not be contrary to the public interest.** The project perimeter setback requirement was put in place in order to protect existing development from encroachment by the proposed development. Since the area adjacent to the proposed deck is unimproved parkland, there are no adjacent developed properties that need protection.
2. **The variance is requested owing to conditions peculiar to the property and not the result of any action taken by the applicant.** The thirty-foot project

perimeter setback is a requirement that may not be waived in approving a Residential Townhouse development. As noted above, the adjacent property does not need protection from encroaching development due to its natural state. To apply this requirement when there is no need for it is clearly peculiar. This is a condition that is peculiar that is not the result of any action taken by the applicant.

3. **A literal enforcement of the Ordinance will result in practical difficulty.**  
Without a variance, the deck would be limited to eight feet in depth. A deck of only eight feet in depth is only slightly deeper than a balcony and would have limited function. As a result, a literal enforcement of the Ordinance will result in practical difficulty because the normal activities associated with an outdoor deck would be limited.

Based on the above, staff recommends approval of Variance Application APP2005-00844, subject to the conditions noted.

#### **NOTIFICATION**

Notices about the public hearing were sent to 122 residences, including those that are legally required.